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Supreme Court of the United States.

OCTOBER TERM, 1898.

No. XXX 1899 29

EMILIE SAXLEHNER,
Petitioner,

vs.

EISNER & MENDELSON CO.

Notice of Motion, Motion and Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

JOSEPH H. CHOATE,
ARTHUR v. BRIESEN,
ANTONIO KNAUTH,
Attorneys and of Counsel for Petitioner.

The Evening Post Job Printing House, New York.

Supreme Court of the United States.

1

EMILIE SAXLEHNER, Petitioner, vs. EISNER & MENDELSON COMPANY.	October Term, 1898. No.

2

Notice of Motion.

TO EISNER & MENDELSON COMPANY, THE ABOVE NAMED DEFENDANT:

Please take notice that on Monday, February 20, 1899, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, a motion for a writ of *certiorari*, of which motion a copy is annexed, will be submitted to the Supreme Court of the United States, at the City of Washington, D. C., for the decision of the Court thereon.

In support of said motion a petition and a brief will also be presented to the Court. A copy of the petition and of the brief are herewith served upon you.

3

Respectfully,

JOSEPH H. CHOATE,
ARTHUR VON BRIESEN,
ANTONIO KNAUTH,
Attorneys and of Counsel for Petitioner.

New York, February 6, 1899.

Due service of the foregoing notice of motion in the above cause is hereby admitted this 11th day of February 1899.

Eisner & Mendelson Co
Defendant.
by Charles G. Coe
Edmund Katzenstein
its attorneys & Counsel

SUPREME COURT OF THE UNITED STATES.

EMILIE SAXLEHNER,
Petitioner,

vs.

EISNER & MENDELSON COMPANY.

October Term, 1898.

No.

Motion.

And now comes Emilie Saxlehner, the above named petitioner, by Joseph H. Choate, Arthur v. Briesen and Antonio Knauth, her attorneys and counsel, and moves this Honorable Court for a writ of *certiorari* directed to the Honorable the Judges of the United States Circuit Court of Appeals, within and for the Second Judicial Circuit, commanding them forthwith to certify and return to this Court all proceedings by them had in the suit lately before them, wherein this petitioner was appellant and appellee and said Eisner & Mendelson Company was appellant and appellee.

The matter involved herein relates to the question of trade-mark rights of the petitioner in and to the name "Hunyadi," and a red and blue label used in connection therewith upon complainant's bitter-water, called "Hunyadi Janos." Your petitioner's right to said trade-mark and label has been held forfeited

by petitioner's laches by the United States Circuit Court of Appeals for the Second Judicial Circuit, which has ordered the petitioner's bill of complaint in the present case to be dismissed.

EMILIE SAXLEHNER,
Petitioner.

By JOSEPH H. CHOATE,
ARTHUR VON BRIESEN,
ANTONIO KNAUTH,
Her Attorneys and Counsel.

Due service of the foregoing motion is hereby admitted this 11th day of February 1899.

Eisner & Mendelson Co
Defendant.
by Charles G. Cox
Edmund Wetmore
its attorneys & Counsel

10 SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1898.

No.

EMILIE SAXLEHNER, Petitioner,
In re petition for a writ of *certiorari* requiring the Circuit Court of Appeals in and for the Second Circuit, to certify to the Supreme Court for review and determination the
11 case of EMILIE SAXLEHNER, Complainant and Appellant,

VS.

EISNER & MENDELSON COMPANY,
Defendant and Appellant.

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

12 The petition of Emilie Saxlehner respectfully shows:

FIRST.—That petitioner is a subject of the King of Hungary, and resides at Budapest, in the Kingdom of Hungary, and the defendant Eisner & Mendelson Company, is a corporation incorporated under the laws of the State of West Virginia, and a citizen of that State.

SECOND.—That the value of the matter in dispute in the above entitled cause, as appears by the bill of complaint therein, exclusive of interest and costs, exceeds the sum of two thousand dollars, and there

is involved in said cause the validity or invalidity of 13
petitioner's trade-mark "Hunyadi" for bitter water, and that of the label used by her, upon which several hundred thousand dollars have been spent for advertising in the course of more than thirty years, and which are of very large value to petitioner in her business.

THIRD.—That this suit was brought to restrain the defendant from infringement upon petitioner's trade-mark rights in the name "Hunyadi," and also from selling bitter waters bearing colorable and fraudulent imitations of the red and blue label used by petitioner in connection with said name "Hunyadi" on her bitter water called "Hunyadi Janos." 14
That the evidence in this case was by stipulation taken in one record with the similar cases of your petitioner against the Siegel-Cooper Company, Rudolph Gies and Louis Marquet, in which similar petitions are simultaneously presented to this Court.

FOURTH.—That the undisputed facts relating to the adoption and use of petitioner's trade-mark and label may be shortly summarized as follows:

Andreas Saxlehner, your petitioner's husband and predecessor in business, now deceased, adopted the arbitrary and fanciful name "Hunyadi Janos" for the bitter water of his springs at Budapest, Hun- 15
gary, more than thirty years ago, and the same has since then been continuously used by him and your petitioner as a trade-mark in all civilized countries. The water was introduced into the United States about 1870, and was sold here under a red and white label until the year 1876, and from 1876 to March, 1896, under a red and blue label substantially like the label hereto attached and marked "Exhibit A," and since March, 1896, under the label hereto attached and marked "Exhibit B." From the commencement of the business in this country the water obtained the colloquial and short

16 appellation "Hunyadi Water." Complainant's business amounts to about six million bottles per year of such water, which she sells to all countries in the world from Hungary.

In the year 1876 Andreas Saxlehner made a contract with the Apollinaris Company, Limited, by which he agreed not to sell directly to this country for a period of years, and that he would sell to that company only the "Hunyadi Janos" water for sale in this and other transmarine countries. This contract has been in force until March, 1896.

No noticeable infringements occurred until 1886, when the Apollinaris Company stopped by injunction an importation of a "Hunyadi Matyas" water
17 imported under a red and white label, and of a "Hunyadi Arpad" water imported under a red and blue label. These injunctions were dissolved in 1888 without a trial on the merits. Saxlehner was not a party to these suits and no competent evidence was offered that he had any knowledge of the same. After 1888, several Hungarian bitter waters were imported bearing red and blue labels and the name "Hunyadi" in connection with some other name, every one of these labels being made in close imitation of Saxlehner's blue and red label. All these were sold in this country as "Hunyadi Water," with exception of those which had not the name "Hunyadi" on the label, such as "Victoria" and
18 "Georgy," which were not sold as "Hunyadi" water. Other Hungarian bitter waters have continued to be imported under their own labels and names and these were not called "Hunyadi."

Until 1890 Saxlehner enjoyed no protection for the name "Hunyadi" or for *colorable* imitations of his labels in Hungary, by reason of a lack of statutes upon the subject. He had repeatedly endeavored to obtain relief in Hungary against the imitators of his name and label, but without success, although he was by many years the first to adopt and use the name and label. He died in 1889. In 1890 a statute was passed in Hungary enabling the

petitioner to sue imitators of her label, and in 1891 19
she commenced a series of litigations against all imitators of her label in Hungary, which were numerous. These litigations came to a successful termination in 1894 and 1895, when she succeeded in having all the imitating labels canceled from the Hungarian Register of Trade-Marks. The statute of 1890, however, did not make provision for the registration of mere words or names as trade-marks, and petitioner, therefore, had no relief in court in Hungary against the use of the name "Hunyadi" alone or in connection with other words, such as "Matyas," "Arpad" or "Lajos" until 1895, when another remedial statute was passed in Hungary permitting such relief. She immediately instituted new suits 20
against the same persons against whom she had obtained the decrees canceling the imitating labels, and in October, 1896, obtained final decrees establishing her exclusive right to the name "Hunyadi" in Hungary for bitter waters and canceling all the opposing trade-marks employing that name in some connection or other. All these opposing marks were found to have been fraudulently contrived. Among the parties sued by petitioner in Hungary in 1891
and against whom she obtained the relief described above in the years 1894 and 1896 were the firm of Mattoni & Wille, who furnished the "Hunyady Matyas" water to the defendant, and also another concern which furnished the "Hunyadi Laszlo" 21
water. The defendant had knowledge of these Hungarian suits at least as early as 1893.

In March, 1896, when the contract of the Apollinaris Company terminated, petitioner also sued the Apollinaris Company in the Court of Chancery of England for an illegal use of the name "Hunyadi" upon a bitter water then introduced by that company under the name of a "New Hunyadi," and in the early part of the year 1897 obtained a final decree enjoining it from the use of the name "Hunyadi." The Apollinaris Company has since then not contested petitioner's exclusive right to the name

22 "Hunyadi" in this country. Petitioner also brought in 1896 a suit against Graef & Co., agents of the Apollinaris Company in this country, which was settled by a voluntary abandonment of the use of the name "New Hunyadi" by the agents of the Apollinaris Company in this country.

In October, 1896, when her rights had been finally recognized and established in Hungary, petitioner gave notice to all infringers in the United States, including the defendant, to stop further infringements, and a few months thereafter brought the present suit.

In 1887 Andreas Saxlehner had registered the name "Hunyadi" as his trade-mark in the Patent
23 Office of the United States in connection with the red and blue label, and this label and name were likewise registered by the petitioner in Budapest in 1890, and the name "Hunyadi" alone without any label in 1895, under the Hungarian statutes above referred to and in accordance with the provisions of the treaty between the United States of America and Austro-Hungary of June 1, 1872.

FIFTH.—The following facts relating to defendant's infringement were found by the Court to be clearly proved:

Defendant first imported in 1889 and 1890 a con-
24 signment of water from Mattoni & Wille in Budapest, called "Royal Hungarian Bitter Water," with a red and white label, under a contract of twenty years. In 1890 defendant gave up this contract and took a lease from Mattoni & Wille, of the so-called "Hunyady Matyas Spring No. 2." "The reason "which induced Eisner to make this lease was his "desire to control the American label, so that "neither Mattoni & Wille nor European purchasers "could interfere with the American trade. A new "label was therefore forthwith devised by Eisner, "which was a reddish brown and blue label, and is "described in the complaint, containing the name

" 'Hunyady Matyas Budai Keserüviz,' and a medal- 25
" lion portrait of King Stephen in the centre of the
" red division. *He intentionally simulated the Sax-*
" *lehner United States label for the purpose of ob-*
" *taining, by means of the simulation, a part of the*
" *good will which the Janos water had gained. This*
" *'Matyas Spring No. 2' was not the original*
" *Matyas spring in regard to which Markus had his*
" *litigation in* 1873, *but was another spring, called*
" *the 'Franz Deak' spring, which Mattoni & Wille*
" *bought in* 1876 *from Michael Ivanyi and wife, and*
" *was the spring registered in* 1877 *under the name*
" *'Deak.'*" This water was "*extensively advertised*
" *as a 'Hunyadi water,' and being sold below the*
" *market price of the Janos water, has been largely* 26
" *bought, especially by druggists who receive the*
" *custom of the class which desires economy.*"

A copy of defendant's Hunyady Matyas label is hereto attached and marked "Exhibit C," and a copy of its "Hunyadi Laszlo" is also attached and marked "Exhibit D."

SIXTH.—The undisputed evidence further showed that defendant had advertised its "Hunyady Matyas" water as the "original Hunyadi Water," in connection with pretended testimonials of physicians dated many years previous to the discovery of the first "Hunyady Matyas" spring, altered so as 27
to read by the name for the Hunyady Matyas Spring, and that the water which it first imported under the name of "Mattoni's Royal Hungarian Bitter-water," with the red and white label, was the same water which it thereafter sold under the red and blue label, with the name "Hunyady Matyas" thereon; also that by reason of the name "Hunyady" on this label, defendant's water was commonly sold as "Hunyadi Water" in this country.

SEVENTH.—The undisputed evidence further showed that to physicians and the consuming public

the name "Hunyadi ~~Janos~~" on bitter-water means in the United States still Saxlehner's "Hunyadi Janos" water, and such name had not become generic for Hungarian bitter waters, other such waters continuing to be imported and sold under other labels and names, and not being called "Hunyadi."

EIGHTH.—There was no substantial conflict about the facts in the case, which were stated carefully and in detail in the opinion of Shipman, Judge, who decided the case at the Circuit Court, and the Circuit Court of Appeals found the facts to be substantially uncontroverted. A copy of the opinion of the Circuit Court is hereto attached and marked "Exhibit E," and a copy of the opinion of the Circuit Court of Appeals is likewise attached marked "Exhibit F."

NINTH.—The Circuit Court held that the charge of laches against the complainant or her predecessor was not adequately sustained, but that by certain publications of the Apollinaris Company, the right to the name "Hunyadi" had been publicly abandoned by that company, which abandonment was binding upon petitioner, although the company was not her agent. It also held that the other dealers could not call their water "Hunyadi," but they could use the word as a prefix. It denied an injunction on the name "Hunyadi" on the ground of such "positive assertions," but granted an injunction against the red and blue labels, excepting from such injunction the "Hunyady Matyas" label when the same was accompanied by the small seal-brand label appearing on "Exhibit C."

The Circuit Court of Appeals decided that petitioner was not bound by said "positive assertions," but was guilty of laches during a period of nine years, denied her all relief upon the name and the label, and dismissed the bill of complaint, with costs.

TENTH.--A petition for a rehearing was thereupon filed by petitioner in the Circuit Court of Appeals, and the Court's attention called to the treaty above referred to between the United States of America and Austro-Hungary, but such petition was denied, and a copy of the opinion *per curiam* rendered thereon is hereto attached and marked "Exhibit G." 31

ELEVENTH.—The decision of the Circuit Court of Appeals was rendered solely upon the supposed authority of the case of *Menendez* vs. *Holt*, 128 *U. S.*, 514, which your petitioner respectfully submits, does not sustain the reasoning of the Court upon the facts which were clearly proved; and that said decision is opposed to the law which this Honorable Court has laid down in the case of *McLean* vs. *Fleming*, 96 *U. S.*, 245, and is also subversive of the rights guaranteed to petitioner by said treaty between the United States of America and Austro-Hungary. 32

TWELFTH.—That the United States Circuit Court of Appeals committed a grievous error in overlooking or disregarding the fact that until the year 1895 your petitioner was unable to restrain in Hungary the use of the name "Hunyadi" in connection with such other words as "Matyas," "Lajos," "Laszlo," &c.; that consequently in the United States her right to restrain the use of that name upon those waters imported from Hungary was doubtful; that petitioner did everything in her power to establish her rights in Hungary when statutory provisions made this possible, and continued these efforts from 1891 until 1896, when she finally succeeded, and that these litigations in Hungary were directed against the very persons who furnished the water to defendant in this country. 33

THIRTEENTH.—That if the decision of the Circuit Court of Appeals is to be the law of the land anybody can, with impunity, sell water from any source

whatever, and of any kind or quality whatever under an imitation of your petitioner's red and blue label and with the name "Hunyadi" thereon, either alone or as a prefix to some other name; that public health is endangered thereby, and the welfare of the community demands that such gross imposition upon physicians and patients alike be stopped by injunction.

FOURTEENTH.—That petitioner has never by words or by deed abandoned her exclusive claim to the name "Hunyadi" or to her red and blue label, but is charged only with the imputed knowledge of manifold infringements and a furtherance of the same by her consignee, the Apollinaris Company, which fraudulently designed to deprive your petitioner by such practices of the name "Hunyadi" for its own benefit, but has been prevented by injunction from carrying such fraudulent scheme to perfection.

FIFTEENTH.—That there is no "Hunyadi" spring in existence in Hungary nowadays outside of the "Hunyadi Janos" springs of your petitioner, and your petitioner's exclusive rights to the names "Hunyadi" and "Janos" are recognized in all civilized countries, excepting in the United States of America, where they are denied by said decision of the Circuit Court of Appeals. That such denial, if sustained, would practically destroy your petitioner's business in the United States.

SIXTEENTH.—The opinion of the said Circuit Court of Appeals was rendered on the 5th day of January, 1899, and remanded the cause to the Court below with instructions to dismiss the bill; that the decree of said Circuit Court of Appeals was duly entered, and its mandate has been issued.

SEVENTEENTH.—And your petitioner further represents that said decree of said Circuit Court of Appeals is final between the parties unless this Honor-

able Court should of its own motion direct the 37
bringing up for review of said cause.

Wherefore, petitioner respectfully prays that a writ of *certiorari* may be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Second Circuit, commanding the said Court to certify and send to this Honorable Court on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said cause therein entitled "Emilie Saxlehner, Complainant-Appellant *vs.* Eisner & Mendelson Company, Defendant-Appellant, No. 1024," to the end that the case may be reviewed and determined by this 38
Honorable Court as provided in Section 6 of the Act of Congress, entitled "An Act to establish Circuit Courts of Appeal, and to define and regulate in certain cases the jurisdiction of the Courts of the United States and for other purposes," approved March 3, 1891; and that your petitioner may have such other or further relief in the premises as to this Court may seem appropriate and in conformity with said act, and that the said judgment of the said Circuit Court of Appeals for the Second Circuit in the said cause and every part thereof may be reversed by this Honorable Court.

And your petitioner will ever pray, &c.

30

EMILIE SAXLEHNER,
Petitioner.

By

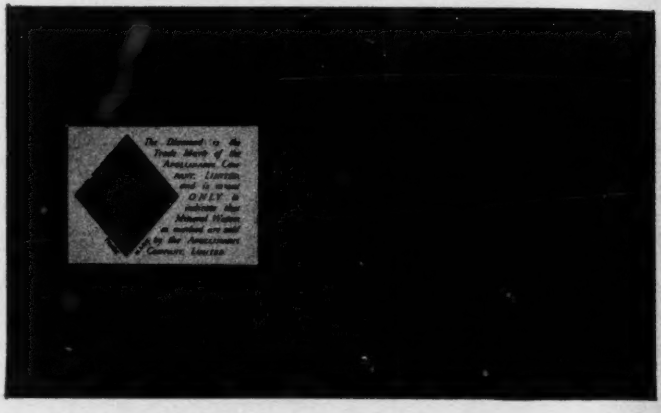
JOSEPH H. CHOATE,
ARTHUR VON BRIESEN,
ANTONIO KNAUTH,
Her Attorneys and Counsel.

Due service of the foregoing petition is hereby admitted this 11th day of February, A. D. 1899.

Eisner & Mendelson Co
Defendant.
by Charles G. Cox
Edmund Wetmore
its attorneys & Counsel

Complainant's Labels.

"Exhibit A."



"Exhibit B."

Defendant's Labels.

"Exhibit C."

"Exhibit D."

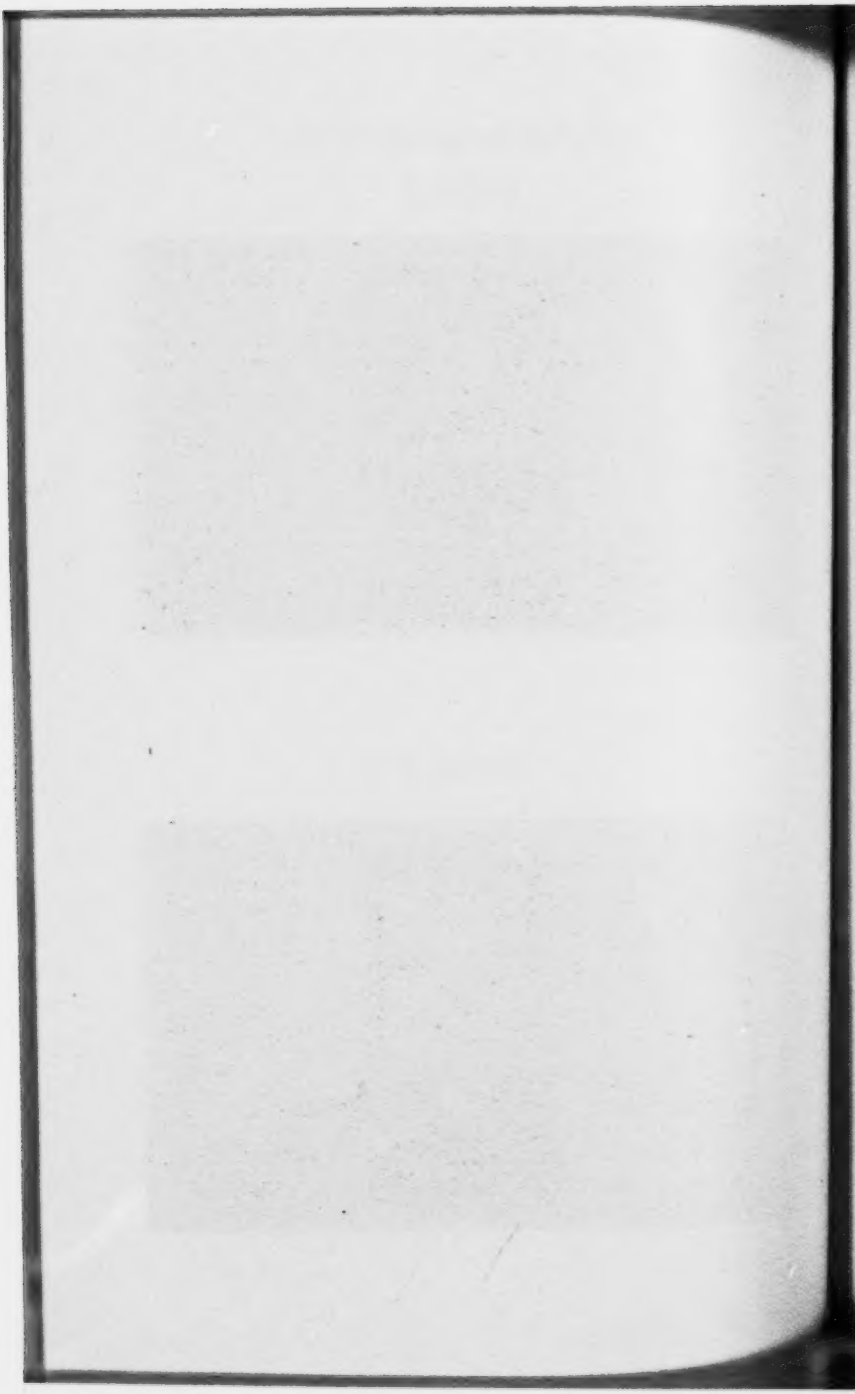


Exhibit E.

40

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

EMILIE SAXLEHNER

v.

EISNER & MENDELSON COMPANY.

41

SAME

v.

SIEGEL-COOPER COMPANY.

SAME

v.

RUDOLPH GIES.

42

SAME

v.

LOUIS MARQUET.

SHIPMAN, *C. J.*—These four bills in equity were brought to restrain the improper use of the complainant's trade-marks and labels, and in the three cases against retailers to restrain the fraudulent sale of the water from wells not of the complainant as the product of the wells which she owns.

43 The jurisdiction of the Court is founded upon the citizenship of the parties. The complainant resides at Budapest, in the Kingdom of Hungary, and is a subject of the King of Hungary. The Eisner & Mendelson Company is a corporation of the State of West Virginia, and transacts its entire business in New York City. The other three defendants are residents of the City of New York and citizens of the State of New York.

The following facts, which were alleged in the bills of complaint, or which are incidental thereto, were clearly proved:

Andreas Saxlehner, in about the year 1863, commenced to bottle the waters of a well of bitter water
44 owned by him, situated within the city limits of Budapest, Hungary, and for the purpose of distinguishing the bitter waters of this spring from other waters then known and on sale, adopted, in 1865, the arbitrary name or trade-mark of "Hunyadi Janos" for the water of his spring. Hunyadi Janos, or John of Hunyad, was a Hungarian hero who lived in the fifteenth century.

The business soon increased, additional wells were sunk by him in the same territory, which gave forth similar water, and in the course of time the water was exported beyond the limits of Hungary to other countries of Europe and also to the United States. When Saxlehner commenced this business he
45 adopted a characteristic and novel style of bottles, the same being of a straight shape with a short neck, to the top of which was attached a metal capsule bearing the inscription "Hunyadi Janos, Budai Keseruviz" (meaning Hunyadi Janos Bitter Water of Buda), together with a portrait, supposed to be the portrait of the hero, stamped therein, and a novel and peculiar label covering almost the whole body of the bottle, the characteristic features of which were a division of the same into three longitudinal fields, the middle field bearing the said portrait in a medallion with the name "Hunyadi Janos" written in large letters on the top part of

the label, the color of the middle field being red. 46
As this water was exported to and sold in the various countries of the world a different custom concerning its appellation sprung up in different countries, the Latin races using the word "Janos" as the common appellation of the water, it being known as "Eau de Janos," or "Acqua di Janos;" while in England and the United States of America the name "Hunyadi" became its common appellation, it being known as "Hunyadi Water."

In the month of March, 1876, Andreas Saxlehner made a contract with the Apollinaris Company, Limited, of London, by which he gave it the exclusive opportunity of selling his Hunyadi Janos Water in Great Britain, the United States of America and 47
other trans-marine countries for a term of years, which terminated finally on March 25, 1896. About this time a label was designed to be used on the bottles which were to be sold by the Apollinaris Company, Limited, of substantially the same contents and characteristic features, but of a different color, the body of the label being a blue color, retaining, however, the red color of the central field. A narrow strip on top of the label was added containing the imprint of the Apollinaris Company as importers, and ever since the making of this contract large quantities of Hunyadi Janos Water bearing this blue and red label were exported to the United States and sold here, the water being ordered and 48
sold under the short name "Hunyadi" or the full name "Hunyadi Janos." In the year 1889 Andreas Saxlehner died, whereupon his widow, the complainant, succeeded him in the business of bottling and exporting the Hunyadi Janos Water, and since the termination of the contract with the Apollinaris Company, Limited, she has continued to export to the United States and sell here the Hunyadi Janos Water in the same bottles and with substantially the same labels, the name of her firm being substituted in place of that of the Apollinaris Company on the labels. In the year 1887 Andreas Sax-

lehner caused the name "Hunyadi" to be registered as his trade mark for natural aperient waters in the United States Patent Office. By reason of the great care exercised by complainant and her predecessors in business in bottling it, the water has become widely and favorably known, and is commonly designated by consumers in the United States as "Hunyadi" water. Until the year 1890 complainant did not enjoy adequate protection in Hungary in the use of her trade-marks and labels on account of a lack of statutes regulating such matters, by reason of which fact other persons in Hungary and in Europe used the name "Hunyadi" in connection with other names, imitating her labels, capsules and bottles, and she was unable to stop these practices; since 1890 the law of Hungary has been changed and she has succeeded in causing all these marks and labels to be suppressed in Hungary, including also the use of the names "Hunyadi Laszlo" and "Huyadi Matyas."

The bill of complaint complained of two different kinds of labels used by defendants in the sale of Hungarian bitter waters, one being marked with the name "Hunyady Matyas," while the other is marked with the name "Hunyady Laszlo," both labels being otherwise closely similar to complainant's label in their color, size, shape and general arrangement, stress being laid upon the tripartite division already described, the medallion portrait on the centre label, the blue and red color, the name "Hunyadi," and also the similarity of the capsules used on both bottles, the bottles being of the same size and shape. It is alleged that these were adopted by the defendants with full knowledge of the complainant's rights and for the purpose of imposing upon the public and depriving the complainant of the benefits of her business. The bill of complaint thus is of a twofold character, being brought for infringement of trade-mark rights of the complainant, and also to enjoin an unfair competition by means of simulated labels and insignia of trade. A decree for

permanent injunction, damages, profits and costs 52
was prayed for.

The wells of Andreas Saxlehner, which finally became 112 in number, are situated in the Valley Orsod, near the inhabited part of the City Budapest, and cover an extent of one hundred acres and produce an aperient water.

In 1873, one Ignatius Markus, the proprietor of a spring of bitter water in Budapest, applied to the city authorities for permission to call the spring and its water by the name "Hunyadi Matyas," and to register this name as a designation of the water. This application was successfully opposed by Saxlehner before the local authorities, but the decision was reversed upon appeal to the Min- 53
ister of Agriculture, who held that the two names were sufficiently distinct and that it sufficiently appeared that the waters of the springs were of the same quality, and granted Markus' petition. Afterwards this spring was registered in Budapest by the name of Hunyadi Matyas.

Thereupon the proprietors of other wells commenced to sell their waters in Europe under the name Hunyadi, with some added name, with the use of a close imitation of the red and white labels.

Saxlehner made, in 1887, another unsuccessful attempt to stop the employment of the name Hunyadi when applied to the water called Hunyadi 54
Joseph. His Hunyadi Janos Water had been sold by him in the United States under the red and white label, to a limited extent, before March, 1876, when he made his contract with the Apollinaris Company of London. By the contract he "abandoned" to that company the exclusive sale of his Janos water in this country. It was to pay specified prices, it agreed to take yearly 100,000 half or entire bottles, and to sell no other bitter water. The goods were to travel at its risk, Saxlehner was to furnish careful package and faultless bottling. Upon the red part of the label there was a warning

55 signed by Saxlehner that "imitation of this water, or of the label or of the capsule, will be the subject of legal proceedings at the instance of the Apollinaris Company," but the company did not agree to institute such proceedings.

The contract was for ten years, and was afterwards extended for twenty-five years beginning January 1, 1876, but the company could withdraw upon twelve months' notice. Saxlehner had no such right of cancellation.

The company went on in the business of selling Janos Water in the United States without a competitor of importance until 1886, and succeeded in developing a very large business, and the water had
56 secured for itself a high popular and medical reputation under the short name "Hunyadi." In 1886, Mattoni & Wille, of Budapest, consigned to one Andreas in New York one hundred and twenty-one cases of their "Hunyadi Matyas" bitter water. This firm had bought four springs in Budapest, one of their purchases being the original Markus spring, and in 1877 they registered in Hungary four trademarks for four several wells, viz., Szcihenyi, Deak, Sz-Istvan and Hunyadi Matyas. Ignatz Ungar & Son became in 1880 the owner of a Budapest spring, which they called "Hunyadi Arpad," and registered the name in Hungary, and in 1886 began to sell the water from it in New York City through
57 Joseph Ungar as their agent. This water was put up in an imitation of Saxlehner's red and blue labels; the Matyas bearing the words "Hunyadi Mathias Quelle" in small print was put up in red and white labels.

Suits were promptly, and before Andreas had an opportunity to sell his lot, commenced in 1886 in the United States Circuit Court for this district by the Apollinaris Company against these agents to enjoin against the use of the trade name "Hunyadi" and of the labels, but were withdrawn on the ground of want of jurisdiction, and two suits, one against Andreas and the other against

Ungar, were brought by the Apollinaris Company 58
in the Supreme Court in the City of New York. *Ex parte* injunctions were issued in each case in February, 1887, and remained in force until July, 1888, when on application of the defendant in the Ungar case, the injunction in that suit was dissolved, no one appearing in opposition and soon after the injunction in the Andres suit was dissolved without objection, and the suit was voluntarily discontinued.

An attempt was made by the Eisner & Mendelson Company to show that the Apollinaris Company notified Saxlehner of the pendency of the motion to dissolve the injunction in the Ungar case, and his refusal to assist in the opposition, but the offered 59
testimony was merely hearsay and was inadmissible.

After the dissolution of these injunctions, the Hunyadi Arpad and the Hunyadi Laszlo Waters were sold in this country by the agent of Ungar, until 1892, who also sold the Hunyadi Bela Water to a limited extent, all under the general name of Hunyadi, and with the imitation red and blue label. The Arpad Water was extensively advertised. The sale of the Matyas Water was not renewed, but the quantity on hand was disposed of under changed label.

The Apollinaris Company published in April 6, 1889, and thereafter in 1889 and 1890, the following 60
advertisement:

"The Appollinaris Company, Limited, London, beg to announce that as numerous Aperient Waters are offered to the public under names of which the word 'Hunyadi' forms a part, they have now adopted an additional label comprising their registered trade-mark of selection, which consists of a red diamond. This label will henceforth also serve to distinguish the Hungarian Aperient Water sold by the company from all other aperient waters."

After April, 1889, and until the cancellation of

61 the contract in 1896, this company placed upon each bottle of Janos Water which it sold in this country, a red diamond, containing these words, "The red diamond is the trade-mark of the Apollinaris Company, Limited, and is meant *only* to indicate that the mineral waters, so marked, are sold by the Apollinaris Company, Limited."

In 1886 or 1887 the Apollinaris Company purchased a spring of bitter water under the name of Apenta, in Budapest, and, immediately upon the dissolution of the contract, began to push the sale of this water in this country and in England, under the name of "Apenta from the Uj (new) Hunyadi Springs at Budapest," with the red diamond label.

62 Its use of the word Hunyadi was stopped by injunction in England in June, 1897, and was abandoned in this country.

The Eisner & Mendelson Company of Pennsylvania, the predecessor of the present defendant, which was organized in April, 1892, and succeeded to all the business and contracts of its predecessor, made a contract dated July 30, 1889, with Heinrich Mattoni, the owner of the springs, the water of which had been sold by Mattoni & Wille, by which it obtained the sole agency for the United States and Canada for the sale of the bitter waters which he owned, for the term of twenty years from September 1, 1889.

63 Eisner, who acted for the Eisner & Mendelson Company, saw half a dozen different Mattoni labels, but devised a new one for the American market and imported some 20,000 bottles in 1889 and 1890, under the name "Royal Hungarian Bitter Water" upon a red and white label. In July, 1890, the Eisner & Mendelson Co. took a lease for five years with an option for a renewal for twenty years thereafter, from Mattoni, of the so-called "Hunyadi Matyas Spring No. 2" and became entitled to have all the bitter water for its American use bottled from this spring. This lease superseded the previous contract, The reason which induced Eisner to make this lease,

was his desire to control the American label, so that 64
neither Mattoni & Wille nor European purchasers could interfere with the American trade. A new label was therefore forthwith devised by Eisner, which was a reddish brown and blue label and is described in the complaint, containing the name "Hunyadi Matyas" "Buda Keseruviz" and a medallion portrait of King Stephen in the centre of the red division. He intentionally simulated the Saxlehner United States label for the purpose of obtaining, by means of the simulation, a part of the good-will which the Janos Water had gained. This "Matyas Spring No. 2" was not the original Matyas Spring, in regard to which Markus had his litigation in 1873, but was another spring called the "Franz 65
Deak" spring, which Mattoni & Wille bought in 1876 from Michael Ivanyi and wife, and was the spring registered in 1877 under the name "Deak."

In May, 1890, the Eisner & Mendelson Company commenced vigorous measures to advertise this water and introduce it through circulars and newspapers and sample bottles, to the druggists and to the physicians. It was extensively advertised as a Hunyadi water, and being sold below the market price of the Janos water, has been largely bought, especially by druggists who receive the custom of the class which desires economy.

On May 2, 1892, the present Eisner & Mendelson Company entered into a contract with Ignatz Ungar 66
& Sons for the sole agency in the United States of their waters from four Hungarian springs, the Hunyadi Arpad, Hunyadi Bela, Victoria and Racoczy Georgy, and acquired by purchase from Perrine & Co., the Ungar agents in New York, their rights under the contract which they had held. In April, 1892, it acquired from a Paris corporation the exclusive right to the sale in this country of a Hungarian bitter spring water called "Hunyadi Laszlo." These various waters, with the exception of the Victoria and the Georgy, were sold under the name Hunyadi and with the red and blue label.

67 In April, 1893, the Apollinaris Company, for the purpose of counteracting the idea that the Eisner & Mendelson Co. had become lessees of all the Hunyadi springs, issued an advertisement and postal cards, of which the following is the important part:

"Before any Hunyadi Water was practically known in the United States, the Apollinaris Company, Limited, of London, widely and successfully introduced the Hunyadi Janos Water, the proprietor in Buda Pest of the springs having entrusted to them, for a term of years still unexpired, the sole sale of this water in England and in all transmarine
68 places. Hunyadi Janos Water having become very popular, quite a number of other waters are now offered for sale, under names, of which the word Hunyadi forms part, and in bottles and with labels, closely resembling in appearance and color those long used for Hunyadi Janos Water.

The word 'Hunyadi' having become a general name for Hungarian bitter waters, good, bad, or indifferent, the Apollinaris Company affixed to the bottles of Hunyadi Janos, the Hungarian bitter water of which they have still the sole sale, a small yellow label with their red diamond, the object of this trade-mark being only to indicate to the public that the bottle so labeled is sold by the Apollinaris
69 Company, Limited."

On July 6, 1893, the complainant bought from Ignatz Ungar & Sons the Ungar Springs, the Ungar contract with the Eisner & Mendelson Company was terminated, and the importation of those waters ceased. In 1895, or 1896, the defendant ceased to import the Laszlo waters.

In 1893, the Eisner & Mendelson Company began to use and has used ever since, upon their standard bottles of Matyas water, an additional label consisting of a red seal upon a white ground and containing the words "Ask for the Seal Brand. This label has been adopted to protect the public from

imitation and as a guarantee of the genuineness of the Hunyadi Matyas Water imported solely by Eisner & Mendelson Co., New York." The attention of druggists has been called to this seal brand by advertisements in the trade papers. The Mattoni lease was renewed for twenty years from March 1, 1895. The Apollinaris Company during the continuance of its Saxlehner contract did not object to the Eisner & Mendelson Company's operations or trade-marks, or representations, except in one particular, which was changed at the former's request. 70

The following table, compiled by the agent of the Apollinaris Company, from the *Journal of Commerce* and *Bonfort's Journal*, which are considered to be authorities upon the subject of importations, states the number of cases of so-called Hunyadi Water, other than Janos, reported in those journals to have been imported into the United States from 1886 to 1896, inclusive: 71

IMPORTATION INTO THE UNITED STATES OF THE FOLLOWING WATERS:

NAME.	1886.	1887.	1888.	1889.	1890.	1891.	1892.	1893.	1894.	1895.	1896.	TOTAL.
Hunyadi Arpad...	201		1,000	7,649	7,979	3,752	4,438	2,882—Jan. 1 to Apl. 30.				27,901
" Corvin..					20							20
" Matyas..					2,390	4,662	4,531	1,954	6,210	5,185	520	25,652
" Laszlo...					200		397	264	235	268		2,064
" Bela.....						307	168	284				919
" Jozsef...						139			144			276
" Lajos. .						667	2,265	2,772	6,148	528		11,380
" Miklos..									132			132
" Vilmos..										263		263

72

The figures given represent cases, each containing fifty (50) bottles.

In 1894, and in October, 1896, the Hungarian Minister of Commerce canceled all the Hunyadi Matyas trade-marks and also five illustrated labels for Hunyadi Matyas bottles, and also canceled the Hunyadi trade-marks of all the claimants or users thereof, except the one belonging to the complainant. This action was taken upon her petition and under au-

73 thority of progressive Hungarian litigation on the subject in 1890 and in 1895, so that it is established in Hungary that the complainant is alone entitled to the use of the word "Hunyadi." This litigation was vigorously conducted by the complainant. The questions in regard to the right of the Eisner & Mendelson Co. to the use of the name Hunyadi and of the Saxlehner label depend upon circumstances which differ in important particulars. The Hunyadi question is by far the most important to the parties.

In 1886, when substantial competition in the sale of Hunyadi bitter waters made its appearance in this country, the name Hunyadi was in fact the
74 established trade-mark of the Janos Water. It was prevented from taking that position in Hungary or in continental Europe by the decision of 1873, which declared that Hunyadi Janos and Hunyadi Matyas were different names. Whether, upon an attack, Saxlehner could have then maintained his right to have an exclusive use of the name in this country is not now clear. The Apollinaris Company having obtained *ex parte* injunctions, abandoned them in 1888, influenced in part probably by the failure of Saxlehner in the Hunyadi Joseph litigation of 1887, published their advertisement of 1889, which announced that their red diamond would serve to distinguish the Janos Water, and again in 1893 published
75 a notice that the word "Hunyadi" had become a general name for Hungarian bitter waters of all varieties of excellence. Much reliance has been placed by the defendant upon these statements, upon the theory that they were made by the agents of Saxlehner. The Apollinaris Co. was never an agent of the owner of the well. Their relations were those of seller and buyer. The company simply agreed to buy a specified number of bottles yearly and to introduce no other bitter water. It did not agree to use any other efforts to protect the good-will or the trade-marks of Saxlehner, or to use any efforts to promote his business or his

pecuniary interests, and it could cancel the contract 76
upon notice. Inasmuch as it was the sole person who had the right to sell the Janos Water in this country and to use its trade-mark and to enjoy the good will of the business, it was in a position in which it could in fact destroy the name and the good-will, if its own interest dictated such a course. In considering the reasons, legal and commercial, which induced the Apollinaris Company to publish its advertisements and to rely upon its red diamond label, it is right to say that the history of the Hungarian litigation and of the continental use of "Hunyadi" presented a legal reason, which was at least very plausible for the conclusion that kindred waters could use the name anywhere 77
and served to embarrass a litigant in the attempt to enforce an exclusive right to it in the United States. Whatever may have induced the action of the Apollinaris Company, it did, notwithstanding the name had become localized here, abandon, in terms and positively, a claim to a right to its exclusive use and affirmed that it had become in practice a general name. As the name had become in fact a trade name in 1886, so, also, it could by affirmation and positive action cease to be such, and when it had publicly become open to use by competitors, the persons who invested their money, in the honest belief that the name was public property, should have a fair standing in a court 78
of equity. I am obliged to say that by the positive action of the corporation, which alone had the right to the enjoyment of the name in this country, and which had the right to bring suits for its protection, it became, after 1888, one which dealers in Hungarian bitter waters could use a prefix to the other specific name of the respective waters. They could not call their water "Hunyadi," but they could use the word as a prefix.

Two causes contributed to this result, first, the action of the Hungarian authorities, and secondly, the careless contract by which the Apollinaris Com-

79 pany entered into no contractual obligations to protect Saxlehner's interest or property.

The question in regard to the label is a different one. The red and blue label was Saxlehner's label in England and in this country. He devised it, and his sole right to its use was never entangled by any claim of a public right to use it wherever Hungarian bitter waters are sold, and before the injunctions were dissolved in 1888, his exclusive right in this country was undeniable. After the dissolution it was used upon the Arpad Water, until July, 1893, when its further use was effectively stopped by the action of the complainant. It was not used upon the Matyas Water until 1890, when the defendant
80 abandoned the use of the Mattoni label, which it had devised, and assumed the insignia of the Janos Water, with a simulated change of color from red to reddish brown. It is said, however, that the Apollinaris Company also abandoned to the public any claim to an exclusive right to a red and blue label. Its action in regard to the name was positive, but it neither asserted nor admitted anything in regard to the label. It simply did not act against its use upon the Arpad Water, which as the table of importations shows, was the only competitor of importance until 1890, nor against the Matyas, which did not come into the field with this label until July, 1890. The other waters whose names were
81 frequently repeated in the record, were of no importance as competitors, certainly until 1895, when the Apollinaris Company gave notice of its intent to cancel the contract. Its conduct in regard to labels was that of indifference and of laches and can give no rights, as against the complainant, to the Eisner & Mendelson Company, who started in 1890 to use her label and feigned to have avoided it. The charge of laches against the complainant or her predecessor is not adequately sustained. Neither of them could practically accomplish anything through litigation in this country, until the cancellation of the Apollinaris contract. In November, 1895, the son

of the complainant came to this country to take 82
charge of his mother's business, and he has been active in litigation since the contract closed, and in October, 1896, notified the defendants of his proposed suit against it. The defendant has, however, since 1893, for the purpose of having a mark of its own and thus avoid the injurious effect of new competition, used a distinctive "Seal Brand," which is a red seal upon a white ground, large enough and peculiar enough to be easily recognized, and which informs the public, in substance, that the water is Matyas Water, and is sold only by the defendant. Inasmuch as the name Hunyadi can be used in this country by rivals of the Janos Water, I think that this label is a sufficient attempt on the 83
part of the defendant to assert that it is the seller of Matyas Water, and that since 1893 it frees the complainant from the charge which before that time was true, that it was cajoling or deceiving the ordinary retail purchaser into the belief that he was buying the Janos Water. This freedom applies only to the water sold under the "Seal Brand."

In the spring of 1896 the Eisner & Mendelson Company imported a few hundred cases of another kind of Matyas Water, which was called No. 3 and which they sold without the Seal Brand and with 3 marked upon the red and blue label. It would not be an infringement, except for the use of the three well known longitudinal red and blue fields of the 84
Saxlehner label, the field covering the whole bottle, and the red field in the middle with a medalion portrait. The company ceased to import this water and it also ceased in 1895 or 1896 to import the Laszlo Water, which was sold under its red and blue label, but it claims the right to sell these or any other Hunyadi waters under the simulated label of Saxlehner. It ceased to make these importations for financial reasons only.

Let there be an interlocutory decree against further infringement of this label and for an accounting for the damages occasioned by past in-

85 fringements since April 13, 1892, the date of the organization of the defendant. The question of costs will be reserved until final decree.

The cases against retailers, which were based upon instances of a fraudulent sale of Matyas Water, representing it to be Janos, were defended by the Eisner & Mendelson Company, and all the cases were presented in one record.

There is no substantial evidence of fraudulent conduct on the part of Siegel Cooper Company, and the bill is dismissed, without costs. The testimony in regard to sales at the retail drug stores of Rudolph Gies and Louis Marquet satisfies me that the clerk in charge at each of those stores, in response to
86 special requests for Janos Water, wrapped up and delivered bottles of the Matyas Water of the Eisner & Mendelson Company. In each case the witnesses were evidently mistaken in regard to the figure and complexion of the clerk, but I have little doubt that the man in charge made the deliveries as testified. Their sales were probably not large enough to justify the expense of taking an account, but there should be in each case an injunction against a sale of Matyas Water as and for the Janos Water of the complainant, without costs.

ANTONIO KNAUTH, for the Complainant.
EDMUND WETMORE and CHARLES G. COE, for
87 the Defendants.

(Endorsed)—U. S. Circuit Court, Southern District of New York.—Emilie Saxlehner *v.* Eisner & Mendelson Company.—Same *v.* Siegel-Cooper Company.—Same *v.* Rudolph Gies.—Same *v.* Louis Marquet.—Opinion.—Shipman, *C. J.*—U. S. Circuit Court.—Filed Jun. 28, 1898.—John A. Shields, Clerk.

88

Exhibit F.

UNITED STATES CIRCUIT COURT OF APPEALS.

SECOND CIRCUIT.

EMILIE SAXLEHNER,
Complainant-Appellant,

vs.

EISNER & MENDELSON COMPANY,
Defendant-Appellant.

89

SAME,
Complainant-Appellant,

vs.

SIEGEL-COOPER COMPANY,
Defendant-Appellee.

SAME,
Complainant-Appellant,

vs.

RUDOLPH GIES,
Defendant-Appellee.

90

SAME,
Complainant-Appellant,

vs.

LOUIS MARQUET,
Defendant-Appellee.

Of these four suits the first is one against a wholesale dealer in imported Hungarian mineral waters

91 which it offers for sale as Hunyadi Matyas, and as Hunyadi Laszlo, and puts up with wrappings and labels simulating complainants. The other three suits are against retail dealers. The complainant sought to enjoin the use of the name Hunyadi with or without prefix, and also to enjoin the use of any label simulating the well known red and blue label of Hunyadi Janos water, which water complainant owns and controls.

The Circuit Court at final hearing upon pleadings and proofs, dismissed the bills as to the name Hunyadi. It sustained them as to the label, except that it held that the use by defendants of a certain additional label, known as the "seal label," sufficiently differ-
92 entiated the goods offered for sale. The complainant has appealed in all four cases, and the defendant in the first case has appealed from so much of the decree as finds that the complainant is entitled to the exclusive use of the red and blue label, and that defendant should account for sales under that label prior to the introduction of the "seal label."

LACOMBE, *Circuit Judge:*

The opinion of the Judge who heard the cause in the Circuit Court is most careful and exhaustive. The voluminous facts are most fully rehearsed and an examination of the records shows that they are
93 accurately stated; indeed, we do not understand that the appellant controverts so much of the opinion. It would be a waste of time to rehearse all these facts here; the opinion of the Circuit Court is reported in Fed. Rep., , and may be there consulted. We concur in the conclusion of that Court that when these suits were begun in 1897 complainant was not entitled to the exclusive use in this country of the word "Hunyadi," which had before that time become a general name properly applicable to Hungarian bitter waters, so long as they were differentiated from each other by distinctive individual names, such as Hunyadi Janos, Hunyadi Matyas, Hunyadi Arpad,

&c. This conclusion is reached, not upon any 94
theory that the Apollinaris Company was the agent of complainant and her predecessors, but because the *latter's* acts and inaction alike make out a case of abandonment. In 1876 the original Saxlehner made a contract with the Apollinaris Company whereby he gave to them the exclusive sale of his Hunyadi Janos bitter water in the United States; that is, he sold to them all they required and agreed to sell to no one else in the United States, and not to sell for export there. Thereupon he devised the red and blue label for use on his bottles sold in the United States placing upon it a notice signed by himself that "imitation of this water, or of the label or of the capsule, will be the subject of legal 95
proceedings at the instance of the Apollinaris Company." Down to 1886 all went well, and at that time the name Hunyadi (the short form used in common speech) was in fact the established trade-mark of the Janos water, and the red and blue label its distinctive trade dress. At that time a few cases of other bitter water "Matyas" and "Arpad" appeared and were offered for sale as Hunyadi Arpad and Hunyadi Matyas, whereupon the Apollinaris Company secured injunctions against their sale. These injunctions, however, were dissolved and the suits discontinued in 1888. From that time on competition steadily increased. As the Circuit Court found: "After the dissolution of 96
these injunctions the Hunyadi Arpad and the Hunyadi Laszlo Waters were sold in this country * * * and also, to a limited extent, the Hunyadi Bela Water, and all under the general name of Hunyadi, and with the imitation red and blue labels." In 1890 the Eisner & Mendelson Company began the sale of Hunyadi Matyas under labels closely simulating complainant's and vigorously pressed the sale of it. The importations of competing waters into the United States from 1888 to 1895, all sold as Hunyadi Water, whether Arpad, Matyas, Laszlo or

97 what not, and nearly all offered under the red and blue labels aggregate as follows:

In 1889.....	7,649	cases (50 bottles each).
" 1890.....	10,789	"
" 1891.....	9,610	"
" 1892.....	11,899	"
" 1893.....	8,156	"
" 1894.....	12,570	"
" 1895.....	6,244	"

To check this appropriation of his trade name and trade label in the United States, Saxlehner, for nearly nine years—from the dissolution of the injunctions in 1888, down to the beginning of these
98 suits in 1897—did absolutely nothing. The Apollinaris Company, whom he had over his signature, proclaimed to the world as the suppressor of infringements, did take action, but not in the line of maintaining the trade name. In 1889 and again in 1890 that company announced that it had adopted an additional trade-mark of selection (a red diamond), which was to distinguish the Hungarian Aperient Water sold by it, and that it did so for the reason that numerous Aperient waters are offered to the public under names of which the word "Hunyadi" forms a part. In 1893 the Apollinaris Company issued a further circular in which it stated that: "The word Hun-
99 yadi having become a general name for Hungarian bitter waters, good, bad, and indifferent, the Apollinaris Company has affixed to the bottles of Hunyadi Janos water the red diamond, &c., &c."

In view of these facts, of the continued and increasing appropriation by competitors of his label and of his trade name (as a general designation) can a complainant who has for nine years done nothing towards maintaining or even asserting his original rights now be heard to suppress the competition which his supineness has allowed and indeed invited and encouraged to grow up? We think not. The case at bar seems to be one of those exceptional ones

referred to in Menendez *vs.* Holt, 128 U. S., 514, 100
where delay or acquiescence has been continued so long and under such circumstances as to defeat the right itself. Nor is the situation changed by Saxlehner's absence abroad. If he had chosen to sell his own goods in this country, thus becoming a dealer here familiar with the conditions of the business, he must inevitably have acquired the knowledge as to appropriation of the name and label, which the Apollinaris Company acquired, and if, with such knowledge, he went on year after year without even giving notice of dissent and non-acquiescence, there would surely come some time when he must be held to have abandoned his exclusive claims. And he cannot avoid the imputa- 101
tion of such knowledge, merely by selling his entire importation to a single person, leaving to that person the distribution of the goods to the trade here. If he wished to hold on to his trade name and trade label in this country he should either have taken steps to advise himself as to the situation, or should have seen to it that his selected vendee who shared with him in his monopoly took proper action to maintain his rights.

The Circuit Court reached the conclusion that although the trade name Hunyadi had thus been abandoned to the public the same was not true of the red and blue label, founding the distinction on the "positive action" of the Apollinaris Company 102
in making the declarations above quoted. Inasmuch as the company was not Saxlehner's agent he cannot fairly be held to be bound by any "positive action" of theirs of which he was not advised; but, as above stated, he is chargeable with their failure to act as much as with his own, and must be held to have abandoned all exclusive claim to the use in the United States either of the trade name or the trade label.

The decree of the Circuit Court is affirmed as to the name Hunyadi, but modified so as to dismiss the bill as to the red and blue label, with costs of this appeal to defendants.

103 **Exhibit G.**

U. S. CIRCUIT COURT OF APPEALS,

SECOND CIRCUIT.

EMILIE SAXLEHNER
vs.
EISNER & MENDELSON COMPANY.

SAME
vs.
SIEGEL-COOPER CO.

104

SAME
vs.
RUDOLPH GIES.

SAME
vs.
LOUIS MARQUET.

SAME
105 vs.
ALEXANDER NIELSEN.

Per Curiam:

We are unable to assent to the proposition that the provisions of the treaty are to be construed so as to hold that when the public in this country has acquired, through the owner's laches, the right to use a trade name and a trade-mark, such right is abrogated whenever by the operation of some subsequent Hungarian law the trade name and trade-mark is secured to him in Hungary. For that reason petition for reargument is denied.